

Once, the sides decided to enter into a contract, they should prescribe accurately provisions of it in order to prevent themselves from breaching of contract by another party. The typical provisions in a franchise agreement include: the rights and obligations of franchisor/ franchisee, miscellaneous provisions which deals with the possibility of the agreement being breached or terminated as well as its term and the means of renewal.

So, all in all, franchising agreement is profitable to both parties: for franchisee it is a chance of operating a successful business, even with no previous experience of running it, whilst for a franchisor it is a good way to get a financial benefit.

References:

1. Антошкіна В. К. Проблеми правового регулювання договору франчайзингу / В. К. Антошкіна, Г. В. Ключко // Вісник донецького національного університету, сер. В : економіка і право. – Вип. 2. – Т. 2. – 2010. – С. 549–553.
2. Паніна Ю. С. Правове регулювання договору франчайзингу в Європейському Союзі та Україні: дис. ... канд. юрид. наук / Ю. С. Паніна. – Ужгород, 2017. – 264 с.
3. Сидоров Я. О. Становлення інституту комерційної концесії в Україні (цивільно-правовий аспект): дис... канд. юрид. наук: 12.00.03 / Сидоров Я. О. – Національний ун-т внутрішніх справ. – Харків, 2004.
4. Українсько-англійський словник правничої термінології / [уклад. Л. В. Мисик]. – Київ, 1999. – 523 с.

CONCEPT, SIGNS AND MEANINGS OF THE MENTAL ELEMENT IN CRIME

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When committing a crime in the mind of the criminal, certain psychological processes occur – the person evaluates his or her actions, in one way or another, anticipates its consequences, is guided by certain motives, tries to reach the corresponding goal. It is named a mental element. The purpose of the research is to investigate the topic and to explain the main features of subjective aspect in Ukraine.

The mental element in crime creates a psychological, that is, the subjective content of the crime, therefore, is its internal, in comparison with the objective, side. The subjective aspect of the crime is the internal aspect of the crime, that is, the psychic activity of the person, reflecting the attitude of his consciousness and will to the socially dangerous act that she is committing, and to its consequences. The meaning of the mental element is that, due to its correct definition: a) the proper qualification of the act is carried out and its separation from other crimes;

b) establishes the degree of social danger of the act and the person who committed it; c) individualization of the punishment of the offender is carried out, the question of the possibility of his release from criminal responsibility and punishment is solved, as well.

The content of the subjective part of the crime characterizes certain legal features. Such signs are the guilt, the motive and the purpose committing of the crime. They are closely linked, but their maintenance and meaning in each case of committing a crime are different. The final motivated conclusion regarding the features of the mental element of the crime in many cases can be made only by fully establishing all the circumstances of the crime. The guilt of a person is a basic, obligatory feature of any crime, it determines the existence of the mental element and, to a large extent, its meaning. According to the law, guilt may come out in the form of intent or inaction. In turn, the intent is divided into direct intention and eventual recklessness, and inaction is divided into criminal self-confidence and criminal negligence. Depending on the form of guilt, the crimes are divided into intentional and careless. Some crimes can be committed intentionally or carelessly. The absence of guilt excludes the mental element and thereby the composition of the crime. The Plenary Session of the Supreme Court of Ukraine pays special attention to the study of guilt in criminal cases. However, in many crimes, the subjective aspect needs to establish the motive and purpose, which are its optional features. They have the meaning of obligatory signs only in those cases when they are named in the disposition of the law as mandatory signs of a particular crime. The particular qualities of some compositions of crimes determine the necessity to find out the emotions that a person feels when committing a socially dangerous act. They differ in their character, content, time of occurrence.

Most of them are outside the mental element of the crime, because they don't affect the formation of its features at all (repentance in the perpetrator, fear of punishment, etc.) or their influence is so small that it does not have a substantial infraction in the formation of the motive for committing in the minds of a person about motive of committing crime (sympathy, pity, etc.). However, some of them give the law a sign of the mental element.

Thus, under Articles 116 and 123 of the Criminal Code, the state of intense emotional excitement plays an essential role in shaping the motive for committing such crimes and is part of the content of the subjective aspect. The establishment of all signs of the subjective side is the final stage in the statement of the crime as the sole reason for criminal liability.

Therefore, finding out the mental element is important. First, it acts as a mandatory element of any crime, and its presence or absence makes it possible to distinguish between a criminal offense and a non-criminal one. For example, there is no crime in accordance with Art. 286 of the Criminal Code, in case of innocent infliction of even grave consequences that occurred as a result of a traffic accident or in the event of an act of negligence, if liability for it was established by law only in the presence of intent. Thus, the absence of intentional guilt excludes criminal responsibility for a knowingly false declaration of committing an offence (Article

383) or knowingly false testimony (Article 384). Secondly, the mental element significantly affects the qualification of crimes and allows to distinguish between identical offences on objective grounds, for example, a deliberate murder (Article 115) from murder through negligence (Article 119). Third, the content of the subjective aspect significantly affects the degree of gravity of the crime, the degree of social danger the person of the subject and, thus, the appointment of punishment.

In Article 62 of the Constitution of Ukraine an important principle is fixed according to which criminal responsibility only occurs when it is proved guilty of a person in committing a crime. This constitutional provision has been embodied in the Criminal Code of Ukraine. A person is considered to be innocent in committing a crime and can not be subjected to criminal punishment until his/her guilt is proved in a lawful manner and established by a conviction of a court (Part 2 of Article 2 of the Criminal Code).

Legislative consolidation of this provision is an important guarantee of legality in the activities of law enforcement bodies and the court. Provisions of Art. 2 of the CC found their further consolidation in Art. 23, where for the first time in our legislation a general definition of the concept of guilt is given, and in articles 24 and 25, which define the notion of intent and negligence and call their kinds. More details of the features of the subjective side are specified in the norms of the Special Part of the Criminal Code. This testifies to the inadmissibility in our right of objective attitude for guilt, that is, the responsibility of a person for a socially dangerous act committed and its consequences without guilt. Thus, the Ukrainian legislation fixes the forms of guilt and points out that their particular manifestation is possible only in the commission of a socially dangerous act. Consequently, the guilt is not only a mandatory sign of the subjective side, but also a prerequisite for criminal responsibility and punishment.

To sum up, the mental element is one of the most important concept in Ukrainian criminal law. Furthermore, it is an obligatory reason of criminal responsibility.

References:

1. Науково-практичний коментар Кримінального кодексу України / А. М. Бойко, Л. П. Брич, В. К. Гришук, О. О. Дудоров та ін. ; за ред. М. І. Мельника, М. І. Хавронюка. – [7-е вид., переробл. та доповн.]. – Київ : Юридична думка, 2010.
2. Прохоренко А. Г. Суб'єктивна сторона злочину. Завдання студентам юридичного факультету для практичних занять і матеріали для їх підготовки / А. Г. Прохоренко. – Львів : юридичний факультет Львівського національного університету імені Івана Франка, 2004.
3. Кримінальне право України: Загальна частина: Підручник для студ. юрид. вищ. навч. закладів / [Ю. В. Баулін та ін.]; за ред. В. В. Сташиса, В. Я. Тація ; М-во освіти і науки України. Нац. юрид. акад. України ім. Я. Мудрого. – Харків : Право, 2010.
4. Мусик Леся Василівна. Українсько-англійський словник правничої термінології / Л. В. Мусик. – М. : Юрінком Інтер, 1999.